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DRAFT 3/19/59

EUR:GER:TDMcKiernan

L:L/EUR:DAWehmeyer:lm1

DRAFT REPLY WITHOUT COMMENT ON SUBSTANCE OF PROPOSALS

Dear (Neil):

I read with great interest the draft statement of policy on Berlin and Germany forwarded with your letter of March 16, 1959, and the three alternative proposals contained in the memorandum submitted to you.

I have passed the memorandum to our officers who are working on the German problem and they will be given full consideration.

I agree that we must make every effort to obtain and keep the initiative in dealing with the Soviets in connection with Germany as well as in regard to other areas. But I do not believe it is correct to represent the Soviets as invariably playing an active, and ourselves invariably a passive, role. Estimates as to where the initiative lies are necessarily subjective, and determining who is responding to what challenge is about like determining which came first, the chicken or the egg. One might, for example, take the view -- and the Soviets possibly do so -- that the recent Soviet moves in Germany have been an attempt to maintain the status quo in the face of Western attempts to change it. One might thus argue, for example, that the Soviet "free city" proposal is designed to eliminate the disruptive influence which Western Berlin, thanks to our initiatives, exerts on the Soviet Zone, and that the proposal for a peace treaty with the "two German States" or a "Confederation" of the two, as well as the threat of a separate peace treaty with the so-called German Democratic Republic, is a response to the Western initiative in pressing for German reunification.

The Honorable

Neil H. McElroy,
Secretary of Defense

We

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Authority NND 887404By AR NARA, Date 1-8-90

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We certainly do agree that the situation requires imaginative thinking in seeking possible new solutions to the German problem, and I can assure you that consideration has been given in the Department to a great variety of ideas. As you know, we have recently completed a paper encompassing the basic elements of a Western position on Germany which we believe contains sound and constructive proposals. This paper is now being discussed by the Four-Power Working Group in Paris, and will receive additional consideration at the Foreign Minister level in the near future.

Your thoughtfulness in making available these ideas originating with your staff is appreciated, and they will be borne in mind should a situation arise where the utilization of such proposals appears appropriate.

Sincerely yours,

Acting Secretary

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August 4, 1945 117145

Draft 3/19/59

EUR:GER:TDMcKlernan

L: L/EUR: DAWehmeyer: jcd: Lnl

I read with great interest the draft statement of policy on Berlin and Germany forwarded with your letter of March 16, 1959, and the three alternative proposals contained in the memorandum submitted to you.

I agree that we must make every effort to obtain and keep the initiative in dealing with the Soviets in connection with Germany as well as in regard to other areas. But I do not believe it is correct to represent the Soviets as invariably playing an active, and ourselves invariably a passive, role. Estimates as to where the initiative lies are necessarily subjective, and determining who is responding to what challenge is about like determining which came first, the chicken or the egg. One might, for example, take the view -- and the Soviets possibly do so -- that the recent Soviet moves in Germany have been an attempt to maintain the status quo in the face of Western attempts to change it. One might thus argue, for example, that the Soviet "free city" proposal is designed to eliminate the disruptive influence which Western Berlin, thanks to our initiatives, exerts on the Soviet Zone, and that the proposal for a peace treaty with the "two German States" or a "Confederation" of the two, as well as the threat of a separate peace treaty with the so-called German Democratic Republic, is a response to the Western initiative in pressing for German reunification.

The Honorable

We

Neil H. McElroy,

Secretary of Defense

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L: Loftra Becker

L: L/EUR: DA Welkner

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Authority NND 887404

By A.L. NARA, Date 1-8-70

We certainly do agree that the situation requires imaginative thinking in seeking possible new solutions to the German problem, and I can assure you that consideration has been given in the Department to a great variety of ideas. As you know, we have recently completed a paper encompassing the basic elements of a Western position on Germany which we believe contains sound and constructive proposals. This paper is now being discussed by the Four-power Working Group in Paris, and will receive additional consideration at the Foreign Minister level in the near future.

The three alternative proposals included in the memorandum which you so kindly sent me have been considered by officers of the Department familiar with the German situation, and appropriate comments on the proposals are enclosed.

Your thoughtfulness in making available these ideas originating with your staff is appreciated, and they will be borne in mind should a situation arise where the utilization of such proposals appears appropriate.

Sincerely yours,

(Herter)

Acting Secretary

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By AK NARA, Date 1-8-70

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Comment on Preamble.

We would concur in the substance of the Preamble subject to changing the word "abrogation" to read "repudiation".

Comment on Alternative One.

If we were to recognize the Federal Republic "as the legal and sole Government of all Germany", we would so depart from reality that we could not reasonably expect to be supported in this position by the international community, since the Federal Republic clearly does not control or purport to control East Germany.

In dealing with the German problem, our position through the years has been that Germany remains as an international entity and is only temporarily divided. The Basic Law (Constitution) of the Federal Republic recognizes that the territory of the Federal Republic is limited to Western Germany. The basic agreement between the three Western Powers and the Federal Republic (the Bonn Conventions) states that "The Signatory States are agreed that the essential aim of their common policy is a peace settlement with the whole of Germany ...". A carefully devised formula has been utilized by the three Western Powers to express the status of the Federal Republic in the international community - "They consider the Government of the Federal Republic as the only German Government freely and legitimately constituted and therefore entitled to speak for Germany as the representative of the German people in international affairs."

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In accordance with this position, we have been successful in frustrating Communist efforts to obtain general recognition of the GDR by the international community.

We continue to believe that the above stated position is preferable to the making of any attempt to have the Federal Republic recognized as the legal and sole Government of all Germany. Moreover, the first alternative, by accepting the abrogation of all agreements with the Soviet Union regarding Germany, would deprive us of the legal basis for our right of access to Berlin without providing any adequate substitute. This is so, because the proposal to serve notice that all agreements with the Soviet Union regarding Germany will be regarded as abrogated in the event of turn-over would include the protocol of September 12, 1944, on zones of occupation in Germany and Berlin, and the agreement on access to Berlin. We feel that such action on our part would be welcomed by the Soviet planners.

In our view, it would be preferable to take such action as may be necessary to maintain access upon the basis of our existing rights and the repeatedly reaffirmed obligations which the Soviet Union owes to us, rather than upon a new theory based upon West German sovereignty over all Germany, including the access corridors.

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Comment on Alternative Two.

This alternative, if the word "abrogated" be changed to "repudiated", is similar to proposals which have been under consideration in this Department. We recognize as a matter of law that we cannot prevent the Soviet Union from giving up its occupational status in Germany and we further agree with your thesis that if the Soviet Union does this, such occupation rights as they have would revert to the three Western Allies rather than to the East Germans. Even this, however, would not excuse the Soviet Union from the obligations it has undertaken with respect to the western allies, including the guarantee of free and unrestricted access to Berlin.

The difficulty that we have with the second alternative is that it appears to concede that the Soviet withdrawal, whether rightly or wrongly, has terminated their obligation to give us free and unrestricted access to Berlin and that we shall, ourselves, maintain such access. This would appear to deprive us of a bargaining point which could possibly result in agreement, namely, a reaffirmation by the Soviet Union of its obligation to maintain free and unrestricted access with notice that it is delegating policing or identification functions to its agents, i.e. GDR personnel. There would be, moreover, great practical difficulties in implementing at this late date our asserted rights to exercise occupational authority throughout Germany.

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Comment on Alternative Three

The principal difficulty with Proposal 3 is that it moves too rapidly to an extreme position, bypassing more favorable alternative courses of action which are available to the Western Powers.

In the event of a "turnover" of functions to the GDR the East Germans would take over subject to the same conditions the Soviets have had, i.e., that the Western Powers have the right of free and unrestricted access over agreed routes in connection with their rights of occupation of the Western Sectors of Berlin. Over the course of years, custom and usage have established what constitutes "free and unrestricted access" in terms of actual practice. What has been taking place has been satisfactory to us, and it is our position that the so-called "turnover" would not deprive us of these rights. Thus our present legal position is a good one even in the event of a turnover; we believe that both the Soviets and the East Germans recognize this, as they have on numerous occasions indicated that the GDR would not interfere with our access.

If, because the Soviets relinquished their position to the East Germans, we indicate that in exchange for the new agreements spelled out in the proposal we would be prepared to recognize de jure the GDR (for such would be the result of the bilateral "guarantee" agreement) such a proposal would indicate that we consider the Soviets and East Germans had succeeded in changing our legal right of free and unrestricted passage, thus making the new agreement necessary. This, it seems to us, would weaken our legal position.

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By AR NARA, Date 1-8-90

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An agreement along the lines proposed would place our rights of access to Berlin on a new basis, one suggesting we are in Berlin at the sufferance of the GDR (see final paragraph of paper). It would be a new and uncertain element in what is now essentially a sound legal position. Thus, it does not appear that obtaining such an agreement would place us in any better legal position than we would be in by relying on our present clearly established rights.

It would not appear that an agreement of the type proposed would be an adequate quid pro quo for our recognition of the GDR, a major objective of Soviet-GDR policy.

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L:Loftus Becker
L:L/EUR:DAWehmeyer:jcd:lm1 3/19/59

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Authority NND 887404
By AR NARA, Date 1-8-90

March 19, 1959

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Downgraded from ~~CONFIDENTIAL~~
EO 11652
August 4, 1978

Dear Arleigh:

762.00/3.759 T.S. file

I appreciated your sending to me the proposal you made to the Joint Chiefs of Staff on the Berlin situation. As you anticipated, and before I could reply, Secretary McNamara transmitted the JCS proposals in which your thoughts were reflected in Alternative 1.

The Department is now considering the total JCS package and we anticipate that the Acting Secretary will shortly make reply to Mr. McNamara.

With warm regards,

Yours sincerely,

Robert Murphy

Admiral Arleigh Burke,

Chief of Naval Operations.

cc: GER

G:DJPorter:eb

March 20, 1959

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By DNF NARA, Date 1-5-92